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JONES DAY
222 EAST 41ST ST
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MAY 24 2005

OFFICE OF PETITIONS

In re Application of :
Michael Coyle, Desmond B. Keenan, P. :
Alexander Derchak, Marvin Sackner, Frank :
Wilhelm, Keith Gilroy, Emerance M. :
Gummels, Dana Michael Inman, Paul :
Kennedy, Mark Mitchnick, and Andrew :
Behar :
Application No. 10/822,260 :
Filed: April 9, 2004 :
Attorney Docket No. 0001733USU/3053 :
Title: SYSTEMS AND METHODS FOR :
RESPIRATORY EVENT DETECTION :
:

DECISION ON PETITION UNDER
C.F.R. §1.47(A)

This is in response to the petition under 37 C.F.R. §1.47(a)¹, filed February 4, 2005. A supplement to this petition was submitted on February 10, 2005.

¹ A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$130;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
- (3) a statement of the last known address of the non-signing inventors;
- (4) either
 - a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
 - b) proof that the non-signing inventor cannot be found or reached after diligent effort;
- (5) a declaration which complies with 37 CFR §1.63.

On April 9, 2004, the application was filed, identifying Michael Coyle, Desmond B. Keenan, P. Alexander Derchak, Marvin Sackner, Frank Wilhelm, Keith Gilroy, Emerance M. Gummels, Dana Michael Inman, Paul Kennedy, Mark Mitchnick, and Andrew Behar as joint inventors. The application was deposited without an executed oath or declaration. On July 1, 2004, a "Notice to File Missing Parts of Nonprovisional Application – Filing Date Granted" (Notice) was mailed, indicating that a fully executed oath or declaration, the associated surcharge, and Figures 14C and 14D were required. This Notice set a two-month period for reply.

Along with the instant petition, Petitioner has submitted a declaration which has been executed by each of the joint inventors save Mr. Inman, the petition fee, the surcharge, and a statement of facts. With the supplement to this petition, a declaration was submitted which contains the signature of Mr. Inman.

It is noted that the declaration cannot be accepted as it contains non-initialed and non-dated changes by inventors Gilroy and Kennedy².

As such, the petition is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.47(a)," and should be accompanied by an acceptable declaration. This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski.

Any renewed petition may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence unless a Change of Correspondence

² See 37 C.F.R. §1.52(c)(1) and MPEP 605.04(a).

³ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.


⁴ Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

⁵ (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.


Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

cc: Dwight H. Renfrew, Jr.
Ohlandt, Greeley, Ruggiero & Perle, LLP
One Landmark Square, 10th Floor
Stamford, CT 06901-2682